IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.1698 of 2007
Date of decision: September 14, 2007.

Soni @ Rajesh & Ors.

...**Petitioner(s)**

v.

Subhash Chand & Anr.

...**Respondent(s)**

CORAM:HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri Amrik Singh Kalra, Advocate for the petitioners.

ORDER

Surya Kant, J. - The respondent-complainant filed a criminal complaint under section 323, 324, 326, 447, 34 IPC against the petitioners. The learned Judicial Magistrate vide his order dated 31.1.2007, however, summoned them to face trial under section 323 read with section 34 IPC only.

The complainant preferred a revision petition which has since been accepted by the learned Additional Sessions Judge, Kaithal vide his impugned order dated 17.5.2007.

Vide the aforesaid order, the revisional court has held that *prima-facie* offence under section 324 and 326 IPC also is made out. Accordingly, the learned trial court has been directed to proceed against the petitioners under the aforesaid provisions as well.

Aggrieved, the petitioners have preferred this revision petition.

It will be apposite to reproduce para 9 of the impugned order passed by the learned Additional Sessions Judge, which reads as follows:-

> " 9. *However, after going through the MLR Ex.PA and report of Radiologist Ex.PB, it emerges that there was amputation of middle and ring finger of the complainant Subhash Chand. Therefore, from the MLR Ex.PA and X-ray report Ex.PB, it emerges that the complainant/revisionist had received injuries which were grievous in nature. It is settled law that at the time of summoning, the complainant was required to show only prima facie case but the learned trial court while considering the MLR Ex.PA and Radiological report Ex.PB has not ordered the summoning of accused under section 324 IPC only on the ground that the doctor has not been produced to prove the MLR Ex.PA an d x-ray report Ex.PB which in the opinion of this court is not proper and has resulted into miscarriage of justice. The learned trial court ought to have considered the MLR Ex.PA and Radiological report Ex.PB and then to form opinion as to what offence was made out. Therefor, since the order dated 31.1.2007 suffers patent illegality on the face of it and thus the same is hereby set aside in the limited extent regarding non summoning of the accused/respondents under section 324 and 326 IPC. Therefore, the learned trial court is required to pass fresh order while considering the MLR Ex.PA and Radiological report Ex.PB and to pass the legal order thereafter as to what prima facie offence was made out to proceed against the accused/respondents. Thus the revision petition is hereby allowed."* (emphasis applied)

Learned Counsel for the Petitioners, though, has raised various contentions, however, he is unable to dispute the fact that as per the MLR (Ex.PA) and the report of the radiologist (Ex.PB), the middle and ring fingers of the complainant were amputated.

Needless to say that if both the medico-legal report as well as the radiologist's report are proved in accordance with law, and if the complainant succeeds in further proving that the aforesaid injuries were

inflicted by the petitioners only, there can be no exception but to hold that an offence under section 324, 326 IPC is also made out.

For the reasons afore-stated, the impugned order does not warrant interference by this court.

Dismissed.

September 14, 2007. [**Surya Kant**]
kadyan **Judge**